No. 3863

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CHINA MAIL STEAMSHIP COMPANY, LIMITED, a corporation, owner and claimant of the Steamship "Nanking," her engines, boilers, machinery, tackle, apparel and furniture,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLEE

JOHN T. WILLIAMS,
United States Attorney,

T. J. SHERDIAN,
Assistant United States Attorney,

WM. T. CARDEN,
United States Attorney, Hawaii,
Attorneys for Appellee.

Neal, Stratford & Kerr, S. F. 39223

No. 3863

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CHINA MAIL STEAMSHIP COMPANY, LIMITED, a corporation, owner and claimant of the Steamship "Nanking," her engines, boilers, machinery, tackle, apparel and furniture,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLEE

STATEMENT OF THE CASE.

This is an appeal from the decree of the District Court of Hawaii rendered in an admiralty proceeding. The United States presented a libel in rem in four counts, identical in form, each to enforce the lien of the government for a penalty of $1000.00 upon the claims that the owners, officers and agents

of the steamer did not prevent a certain alien passenger from landing at Honolulu in a place not designated by any Immigration Officer. It was prosecuted under the provisions of Section 10 of the Act of February 5, 1917, (39 Stat. 881; Section 3708 Barnes Federal Code, 1919,) which Section is set forth in extenso in the first paragraph of each count of the libel.

It is alleged in each count of the libel that during the months of January and February, 1921, the "Nanking" was a common carrier of passengers, operating by steam power between the ports of Hong Kong, China, and San Francisco, California; that on February 1, 1921, there was being carried and transported from Hong Kong, China, to Mazatlan, Mexico, through San Francisco, as a passenger, on said "Nanking" a named person who was an alien and a subject of the Republic of China; (Record page 6). These averments were expressly admitted in paragraph one of the answer of the China Mail Steamship Company, Limited, owner and claimant of the steamship. (Record p. 21).

It was further alleged in paragraph three in part:

> "That from about 4:10 o'clock p. m. of the 1st day of February, 1921, to about 2 o'clock a. m. of the 2nd day of February, 1921, the said steamship "Nanking" was docked at the port of Honolulu, District of Hawaii, and the said * * * * * * was then and there a passenger on the said "Nanking" having theretofore taken pass-

> age on said "Nanking" at the port of Hongkong, in the Republic of China;" (Record p. 6).

these allegations were expressly admitted in paragraph two of the answer. (Record p. 20).

It was alleged in paragraph four in part:

> "That while said "Nanking" was in the port of Honolulu aforesaid, at the time aforesaid, the said * * * * did land in the United States at the port of Honolulu aforesaid, and the owners, officers and agents of the said "Nanking" did not prevent the said * * * * from then and there landing in the United States;" (Record, p. 7)

these allegations were expressly admitted in paragraph three of the answer. (Record p. 21).

It was alleged in paragraph five of each count of the libel

> "That at the time said * * * * landed at Honolulu as aforesaid said port of Honolulu had not been designated by any immigration officer of the United States where the said * * * * might land at the time said "Nanking" was docked at said port of Honolulu on said 1st and 2nd days of February, 1921, as aforesaid, and authority had not been given to the said * * * * nor to any of the owners, officers or agents of the said "Nanking" to permit the said * * * * to then and there land at said Honolulu aforesaid;"

these allegations were expressly admitted in paragraph four of the answer. (Record p. 21).

The answer further in paragraph two thereof, after making the admissions above set forth, proceeded to deny the conclusion of law in paragraph three of the libel that the owners, officers and agents of the "Nanking" were then and there charged with the duty to prevent the landing of said alien passengers at the port of Honolulu, although admitting that they were then and there required to exercise "all due and reasonable care and diligence and do all that reasonably lay within their power" to prevent such landing. And the answer, after making admissions of the quoted averments of paragraph four of the libel, proceeded to deny the conclusion of law of said paragraph, denying "that the owners, officers and agents of said 'Nanking' (or any of them) did unlawfully permit" said passengers to land as aforesaid.

Paragraph seven of each count of the libel proceeded to set forth the conclusion from the foregoing facts that the "Nanking," and her appurtenances, by virtue of said Act referred to, became subject to the penalty of $1000.00. This statement, which may be deemed the conclusion of the law of the pleader, was also denied in the answer.

It was also alleged in paragraph six of each count of the libel that in the opinion of the Secretary of Labor of the United States it was impracticable and inconvenient to criminally prosecute the person, owner, master, officer or agent of said steamship "Nanking" for the unlawful landing of the named passenger in the United States as aforesaid. The

only response to this averment in the libel is "claimant leaves libellant to its proof of the matters alleged in paragraph 6 of each of said counts of the libel."

In paragraph 7 of the answer the claimant proceeded to set forth in detail the theory of its defense as follows:

> "And said claimant, further answering all and singular the matters alleged in said libel and in each of the said several counts thereof, says that it has a good and meritorious defense to the several claims set forth in said libel, to wit:
>
> That the said four alien passengers escaped from the said vessel against the will and intent of the owner, officers and agents of the vessel, and that neither the master or any other officer or agent of said vessel nor the owner thereof either knowingly or negligently permitted the landing of said alien Chinese from said vessel, and that every reasonable and proper precaution was taken and exercised by the master and other (22) officers and the owner of said vessel to prevent any passengers on said vessel from leaving said vessel, and none in fact did leave or escape from said vessel except over the regular gangway to the dock, which gangway was well guarded by the master and agents of said vessel to prevent any and all aliens from leaving said vessel without exhibiting proper passes issued by the Inspector of Immigration at Honolulu, and that no alien or Chinese passengers did in fact leave said vessel over said gangway without exhibiting such pass; and

claimant is informed and believes and therefore alleges and proposes to prove in this cause, that the said escapes were effected by the fraudulent use of passes theretofore regularly and properly issued by the United States Inspector of Immigration at said Honolulu, and approved by Castle & Cooke, Limited, (the then agents for said steamship company), to Chinese residents of Honolulu having lawful business on the vessels of said steamship company, which fraudulent use consisted in one or more of said passes (either with or without the connivance of the legitimate holders thereof therein named) having been given to one or more persons holding his or their own proper pass or passes, who took such other passes on board the vessel and there gave such other passes to the several Chinese who escaped, thereby enabling said escaping Chinese to use said passes as though their own, by falsely impersonating the person named in such pass, with the aid of wearing some article or articles of wearing apparel theretofore surreptitiously furnished to them by conniving friends or agents and bearing some mark denoting the origin or purchase thereof in Honolulu, thereby passing the Immigration Inspectors and guards and the guards furnished by said vessel at the gangway of the vessel as Honolulu residents and in the manner beyond the power of said steamship company to have anticipated and prevented; and also, as claimant is informed and believes, and proposes to prove in this cause, passes or permits were occassionally made out by the Inspector of Immigration at Honolulu for more than one person for Chinese of Honolulu desiring to visit on board

vessels in port and it would therefore be possible and easily practicable for such passes to be used by one or more persons less than the whole number of persons mentioned therein in boarding any vessel and then used to pass from the ship by the full number of persons therein mentioned; and that on February 1, 1921, while said steamship "Nanking" was in port at Honolulu, Chinese visiting them from Honolulu did board said vessel, over the regular gangway with passes issued by said Immigration Inspector, and, while claimant cannot allege or prove with certainty that any such double passes were in fact then used, claimant nevertheless alleges that the existence of such a situation would render possible the illegal landing of alien passengers, notwithstanding all efforts of the steamship company to prevent the same."

It is further contended in paragraph eight of the answer that the section of the Immigration Act in question is "unreasonable, harsh, and oppressive," and is "illegal and unconstitutional."

On the coming in of the answer, the libellant excepted thereto for that it was insufficient and contemptuous and did not constitute any defense to the libel and specified that the answer did not deny any material allegation of the libel, but that it admitted, in articles I, II, III and IV, thereof, all the material allegations, and further that the allegations of paragraph seven above set forth were irrelevant and contemptuous, and that none of the facts or said facts were relevant nor constituted a

defense, and that the allegations of Article VIII challenged the unconstitutionality of the Section of the Act in question, and stated the mere conclusion of the pleader. (Record, p. 27).

On November 16, 1921, the Court, after a hearing, sustained the exceptions to the answer and directed that unless complainant should amend its answer within ten days, a decree might be entered for the libellant according to the prayer of the libellant. The claimant elected in open court not to amend its answer or plead further. The court thereupon entered the final decree appealed from.

QUESTIONS INVOLVED

The appellant urges in its brief four specified points which it contends requires the reversal of the decree, viz:

(1) That Section 10 of the Immigration Act should not be taken as imposing an absolute duty to prevent aliens from landing, but that due diligence exercised to prevent it should constitute a defense, and that if otherwise construed the Section would be unconstitutional.

(2) That the allegation that in the opinion of the Secretary of Labor it was impracticable to prosecute the owners, etc., was put in issue and was not proven.

(3) That the aggregate penalties of $4000.00 were excessive, it being urged that the single penalty of $1000.00 would alone have been authorized.

(4) And that the case is not governed by the Immigration Act, but that it comes under the Chinese Exclusion Act.

But the question more particularly involved is; Did the court err in sustaining the exceptions to the answer? As to the proper solution of this question, the points urged may have more or less pertinency.

ARGUMENT.

I.

THE DUTY RESTING UPON THE OWNER OF A STEAMSHIP BRINGING ALIENS TO THE UNITED STATES TO PREVENT SUCH ALIENS FROM LANDING AT A TIME OR PLACE OTHER THAN AS DESIGNATED BY IMMIGRATION OFFICERS IS ABSOLUTE; IT IS NOT EXCUSED BY ANY SHOWING OF LACK OF NEGLIGENCE IN THAT BEHALF.

In the case at bar there have arisen two conflicting theories as to the character of the duty imposed by section 10 of the Immigration Act upon steamship companies. It is contended by the government that such duty is absolute, and that it cannot be excused by any showing of the exercise of care or the want of negligence in the premises. On the other hand, the China Mail Steamship Company, the claimant of the libeled steamship claims that this duty is not absolute, that an unlawful landing may be excused

by showing the exercise of diligence, and that although a steamship company may afford facilities for an alien to come to one of the harbors of the United States, and does not prevent such alien from landing contrary to law, it may, nevertheless, be excused from the penalties imposed upon a showing that its officials or some of them, exercised ordinary care. These two conflicting views indicate the principal question to be decided on the instant appeal.

It is undisputed that the allegations of the libel brought the owners of the "Nanking" squarely within the terms of the section 10 of the Immigration Act. It was alleged that while the "Nanking" was a common carrier of passengers, it was transporting from Hongkong to Mazatlan through San Francisco a certain alien passenger named, and that on or about February 1st or 2nd, 1921, while the steamer was docked at the port of Honolulu the alien passenger landed and that the owners of the "Nanking" did not *prevent* his landing, and that he landed at a place not designated by any immigration officer. If the duty was absolute or in other words if the statute meant what it clearly said, the steamship company thereby incurred the penalty imposed by Section 10 of the statute. These facts were expressly admitted in the answer tendered. It could not have been denied nor was it denied that the steamship company *failed* to *prevent* the *landing,* at a place *not designated, of the alien* in question. The landing is sought to be excused by a showing of the exercise of reasonable care and diligence or more

particularly by a showing of the matters stated in the answer to the libel in paragraph VII thereof. It thus appears that the tendered answer sought to raise the alleged defense of the exercise of due care. Whether the company would have been excused if the landing had occurred through *"vis major"* or "inevitable accident"—if such would constitute a defense—is not involved.

That Congress intended in enacting Section 10 of the Act of February 5, 1917—The Immigration Act—to alter the rule in question so as to make the duty absolute, appears abundantly from a consideration of the course of legislation. It may be useful to state the previous law on the subject Section 8 of the Act of March 3, 1891, 26 Stat. page 1085, was as follows:

> "It shall be the duty of the officials, or officers, and agents of such vessel to adopt due precautions to prevent the landing of any alien immigrant at any place or time other than that designated by the inspection officers, and any such officer or agent who shall either *knowingly* or *negligently* land or permit to land any alien immigrant at any place or time other than that designated by the inspection officers, shall be deemed quilty of a misdemeanor."

In the Immigration Act of February 20, 1907, Section 18 dealing with the same subject, was as follows:

> "That it shall be the duty of the owners, officers, or agents of any vessel, ... to prevent

> the landing of such alien in the United States at any time or place other than as designated by the immigration officers, and the *negligent* failure of any such owner, officer or agent to comply with the foregoing provisions shall be deemed a misdemeanor'' etc.

The Act of March 3, 1891, cited above, was considered by the Supreme Court of the United States in the case of Hackfeld & Co. vs. United States, 197, U. S. 442, 49 Law Ed. 826, The court there said:

> ''The statute imposes upon one who has brought immigrants into the United States not permitted to land here the duty of returning them to the place from whence they came, with a penalty by fine in case the duty is neglected. If by this requirement it was intended to make the shipowner or master an insurer of the absolute return of the immigrant, at all hazards, except when excused by vis major, or inevitable accident, it would seem that Congress would have chosen terms more clearly indicative of such intention, and, instead of using a word of uncertain meaning, *would have affixed the penalty* in cases wherein the *owner* or master *omitted* or *failed* to safely return the immigrant illegally brought here, or provided some punishment for the person who had so far complied with the terms of the statute as to receive the immigrant on board his vessel, but had permitted the escape, either with or without fault upon his part.''

Apparently Congress acted upon the very suggestion of the court and amended the statute so as to

make the duty of the steamship company turn on the meaning of the word "fail" and enacted the statute in its present form which reads as follows:

> Sec. 10. "That it shall be the duty of every person, including owners, officers, and agents of vessels or transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section twenty-three of this Act, bringing an alien to, or providing a means for an alien to come to, any seaport or land border port of the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers, and the failure of any such person, owner, officer, or agent to comply with the foregoing requirements shall be deemed a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than $200 nor more than $1000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor it is impracticable or inconvenient to prosecute the person, owner, master, officers, or agent of any such vessel, a penalty of $1000 shall be a lien upon the vessel whose owner, master, officer or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States Court."
>
> (Act of February 5, 1917, 39 Stat. 881).

There can be no reasonable contention that Congress did not intend by the new enactment to make

the duty absolute which theretofore had been relative.

This is shown by a consideration of a portion of the history of the enactment of the Immigration Law of 1917. While the act was being debated in the House of Representatives under the five minute rule, an amendment was offered by Mr. Bennett, a representative from New York, which would have had the effect of restoring the word "negligent" to the section. It was urged in the debate, in response to the proposed amendment, that a change in the law was sought in a report of the Commissioner of Immigration, and was intended and desirable, and the amendment was voted down. See Congressional Record of 64th Congress, first session, Vol. 53 Pt. 5, pages 5028 to 5030, as of the date March 28, 1916. The Act in question was numbered H. R. 10384, and the report of the House Committee on Immigration in explanation and support of the legislation was Report No. 352.

In the case of
Taylor v. United States 152 Fed. 1,

the court referred to the history of the legislation involved and showed that Congress in a later statute made use of the words "any alien" instead of the words "alien immigrant" used in the earlier enactment, and held that the change was very significant in considering the meaning of the language used in the later statute. And the court said that the proceedings before Congress during the passage of

the bill clearly indicated that Congress was satisfied that the use of the word "immigrant" had given rise to the construction of the earlier acts which rendered them inadequate to accomplish their purpose, and made it necessary to adopt the broader term. That case was also cited in the subsequent case of

Ex Parte Hoffman 179 Fed. 839 in which the same court reiterated the principle.

In the case of
Lapina v. Williams, 232 U. S. 78, 58 Law Ed. 515,

the Supreme Court of the United States after a consideration of the course of proceedings before Congress applied the same reasoning and referred with approval to the enunciation of the same principle in the case of

Taylor v. U. S. Supra,

and although noting that the Taylor case had been reversed by the Supreme Court upon an appeal thereto, pointed out that the reversal was based upon a different ground, to wit, that section 18 did not apply to an ordinary case of a sailor deserting while on shore leave. It is apparent from a consideration of the opinion in the Lapina case that the reasoning in regard to the inference to be drawn from a consideration of the legislative history was approved.

So in the case at bar, it is obvious that when Congress deliberately altered the language of the

Immigration Act so as to strike out the word "negligent" and leave what had previously read "the negligent failure" to read simply "the failure" etc., there was intended to be accomplished a substantial change in the law, and that under the later act the duty to prevent a landing was absolute, and was more than simply to be free from negligence.

In the case of
The Ivor Heath 275 Fed. 67,

there was a claim made for the recovery of a penalty against a steamship for bringing in smoking opium not shown on its manifest. It was urged that it was a hardship to impose upon the owners of the vessel such a severe liability when there existed no guilty intent or knowledge on their part. But the Court cited with approval the early cases of

The Queen, 27 Fed. Cs. 672, No. 16108, and
The Helvetia, 11 Fed. Cs. 1061, No. 6345,

as authority to the effect that it was not a defense that the master of the vessel had no knowledge or information in the premises or that he took all precautions in his power to prevent smuggling. The Court quoted from the decision of Judge Woodruff in the former case that

> "If it were to be so held the door to smuggling would be open so wide that these statutes would be a dead letter."

Thus from experience in the practical application of these and similar statutes, the Congress has real-

ized that if such acts and similar acts are to be of any practical effect, the duty to be imposed upon steamship companies to prevent smuggling or unlawful landing of aliens must be made absolute in certain cases and that in enacting Section 10 of the latest Immigration Act above quoted, Congress had such an intent to so make the duty incumbent upon owners of steamships bringing aliens to an American port to prevent unlawful landing an absolute duty.

We submit these general observations, yet in truth the strongest argument is to cite the very language of the statute involved. It does not admit of construction; the duty imposed is to *prevent the landing,* etc., failing the performance of which duty the penalty is incurred. The terms made use of by the Congress in the present statute inevitably impose an absolute duty.

Finally the suggestion is advanced that the statute if so construed is unconstitutional. But the argument is not developed at length nor supported by authority. Nor is any particular provision of the constitution pointed out that can be said to be violated. The owners of steamship companies incurring the penalty in question are afforded due process of law before they are required to pay the penalty. They are not obliged to engage in the business of bringing immigrants to the United States, and the Congress can absolutely prohibit any and all immigrants from being brought. It can thus allow their bringing in upon terms and no constitutional

provision is violated when it is enacted that no steamship company can bring aliens to an American port except upon the terms that they absolutely insure that such immigrants shall not be landed contrary to law.

The principle of the legislation is not confined to the instance case. It has been found upon experience to be necessary and it has been applied to other similar situations so that if the law in the instant case were held unconstitutional it would have far reaching implications, and would nullify such legislation as that contained in the Opium Act and in various Customs statutes providing for such penalties as make the ship owners or importers insurers of a compliance with the law in cases where they have some manner afforded facilities for its violation. That legislation of this character is not invalid has been decided by the Supreme Court of the United States in the case of

Goldsmith Jr. Grant Co. v. United States, 254 U. S. 505, 65 L. ed. 376, 378.

The suggestion that it will render it difficult for American steamship owners to do business or compete with rivals may be disregarded for the statute bears equally upon all steamship companies, foreign or American.

Nor were the owners of the vessel free from negligence; on their own showing they knew they were carrying alien immigrants of a class excluded from the United States. They were affording facilities

to such immigrants to go from Hongkong to Mazatlan, Mexico, through San Francisco—a voyage in itself suspicious; they were bound to suspect that such immigrants were seeking ultimately to enter the United States and meant to so enter immediately if possible. They allowed such immigrants to mingle freely with residents of Honolulu of the same race and appearance, and yet took no precaution to identify the one from the other. No blame can be attached to immigration officials; they had issued passes for their own purposes to allow the return of residents of Honolulu who might have business aboard. It is not contended that they gave any directions or permission to the passengers in question to land, for the allegations of the libel that such permission was not given are admitted. Apparently, the master of the vessel failed to adopt the obvious precaution of taking up the passes on entering and issuing checks. If such conduct be called the exercise of due diligence in the premises it would open wide the door to the entry of excluded classes.

II.

THE AUTHORITY OR DIRECTION OF THE SECRETARY OF LABOR TO PROCEED IN ADMIRALTY TO RECOVER THE PENALTY INSTEAD OF PROSECUTING THE OWNERS CRIMINALLY WAS NOT AN ISSUE.

It is further contended by appellant that there was in issue the question of the opinion of the Secre-

tary of Labor that it was impracticable or inconvenient to prosecute the owner criminally, and that therefore the vessel should be libeled for a penalty, and it is said that such allegation was not proved. Had the case been tried, it would no doubt have been deemed of minor importance, not going to the merits and it probably would have been ignored by the parties. In fact it may be reasonably urged that the matter never constituted a formal issue to be tried, any more than the question of the authority of the United States Attorney to appear in any case, which is presumed.

But the point is not available in the instant case because while the libel contained the formal allegation in proper form the cause assumed such a status that the libelant became entitled to proceed as upon a default. As we have seen, the exceptions to the answer to the libel were properly sustained. This displaces the answer for all purposes. Under Admiralty Rule No. 30, it is provided that when exception is properly taken to the answer and the exception is allowed, the Court may by attachment compel the defendant to make further answer thereto or may direct the matter of the exception to be taken *pro confesso* against the defendant to the full purport and effect of the article to which it purports to answer as if no answer had been put in thereto. Here the exception was, among grounds, upon the ground that the answer did not deny any material allegation of the libel. Under Admiralty Rule No. 27 it is provided that the answer shall be *upon oath*

or solemn affirmation, and shall be *full* and *explicit* and *distinct* to each separate article and separate allegation in the libel. Tested by this rule the answer was insufficient even in respect of the allegation of the authority of the Secretary to proceed; for the answer neither admits nor denies the averment, nor does it state that the pleader has no knowledge or belief in the premises, nor that it is ignorant of the truth of the allegations. It merely states that it leaves libelant to its proof of the matters alleged, which means nothing, as was held in the case of

O'Keefe v. Staples Coal Co. 201 Fed. 135, 137,

In that case it appeared that in certain articles of an answer the respondents neither admitted nor denied certain allegations of the petition and left the petitioner to make such proof of the same as might be material. The Court said that it was no where stated that the respondents were ignorant of the truth of the allegations thus treated, and further that unless really ignorant they were bound to either admit or deny. We submit that the answer in respect to the matter referred to was not "on oath" or "full" or "explicit" or "distinct" or according to the rules of pleading, and that it was properly disregarded. Exceptions having been sustained to the answer, the claimant having refused in open court to amend, the court properly proceeded as upon a default.

III.

SEPARATE PENALTIES IN THE CASE OF EACH ESCAPING ALIEN PASSENGER WERE PROPERLY IMPOSED.

It is contended that the penalties imposed were grossly excessive. As to whether the penalty in the case of each escaping passenger should have been the maximum or less would at least be a matter within the discretion of the trial court, and cannot now be questioned. But the more particular contention of appellant seems to be that there should have been a single penalty. But the very language of Section 10 of the Act is against appellant's contention. The duty imposed is one respecting each single alien, and is to prevent his landing unlawfully and the failure to comply with that duty renders the owner subject to the penalty of a thousand dollars. The Act is so drawn as to relate to each individual passenger and not to any particular voyage. See Pollock vs. Steamboat Sea Bird, 3 Fed. 573, 576.

For ought that appears from the record, the escapes in question may indeed have been entirely separate and distinct, the averments of the libel would so imply.

IV.

THE INSTANT CASE IS GOVERNED BY THE IMMIGRATION ACT AND NOT BY THE CHINESE EXCLUSION ACT.

The language of the Immigration Act does not declare any exceptions; by its terms it applies to any alien immigrant that comes within its terms, and it cannot be disputed that the alien immigrants in the instant case were within its terms; whether on other matters the particular aliens would have been within the Chinese Exclusion Act is not material. We think the point has been decided against the contention of appellant in the case of

U. S. vs. James Butt, 257 U. S. 38, 65 L. Ed. 119.

And the same point was so decided in the earlier case of

U. S. vs. Wong You, 223 U. S. 67 56 L. Ed. 354.

There the court speaking of the Immigration Act of February 20, 1907, 34 Stat. 898, said that by the language of the Act any alien that enters the country unlawfully may be summarily deported upon the order of the Secretary of Commerce and Labor at any time within three years, and that it seemed unwarranted to exempt the Chinese from this liability because there was an earlier more cumbrous proceeding which this partly over laps.

CONCLUSION.

In conclusion, it is submitted that upon the conceded facts of the instant case penalties were properly imposed, and that the judgment of the District Court of Hawaii is proper and well based in law and should be affirmed.

JOHN T. WILLIAMS,
United States Attorney,

T. J. SHERDIAN,
Assistant United States Attorney,

WM. T. CARDEN,
United States Attorney, Hawaii,
Attorneys for Appellee.